

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:09CR3
(Judge Keeley)

JOSEPH VANSACH,

Defendant.

ORDER FOLLOWING THE FINAL PRETRIAL CONFERENCE

On April 9, 2009, the Court held a final pretrial conference in this case. For the reasons stated on the record at the hearing, the Court:

- **OVERRULED** the defendant, Joseph VanSach's ("VanSach"), objections, **ADOPTED** the recommendations in Magistrate Judge Kaull's Report and Recommendation dated March 13, 2009 (dkt. no. 50), and **DENIED** VanSach's "Motion to Dismiss for Lack of Subject Matter Jurisdiction" (dkt. no. 15), "Motion to Dismiss for Unreasonable Delay in Presenting Indictment" (dkt. no. 17), and "Motion to Quash for Failure to Properly State Criminal Offense" (dkt. no. 19);
- **DENIED** VanSach's "Motion to Dismiss Based on Double Jeopardy Violation" (dkt. no. 42);

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- **OVERRULED** VanSach's objections (dkt. nos. 59, 60, and 61) to Magistrate Judge Kaul's denial of his "Motion for Appointment of an Investigator," "Motion for Bill of Particulars" and "Motion to Request Grand Jury Transcripts";
- **DENIED AS MOOT** VanSach's "Motion for Court Reporter to Take Voire Dire and Opening and Final Arguments" (dkt. no. 27);
- **GRANTED** VanSach's "Motion Not to be Tried in Prison Clothes" (dkt. no. 28);
- **LIMITED** VanSach to three (3) character witnesses for the purpose of testifying to his law abiding character, character for peacefulness, or veracity;
- **GRANTED** VanSach's withdrawal of certain witnesses from his witness list, namely witness numbers 15-20, 57, 59-61, 63-65, and 67;
- **GRANTED** VanSach's oral motion for a continuance of the final pretrial conference and the trial in this case in order to allow him time to consider a possible plea to the charges or to adequately prepare for trial; and
- **HELD IN ABEYANCE** the remaining issues in the case.

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Accordingly, the Court **RESCHEDULES** the final pretrial conference for **May 12, 2009** at **10:30 A.M.** and the trial for **May 19, 2009** at **9:30 A.M.**, both to be held at the **Clarksburg, West Virginia** point of holding court.

I. Speedy Trial Findings

In granting a continuance, the Court must address speedy trial issues. Zedner v. U.S., 547 U.S. 489, 506-07 (2006). VanSach was indicted on November 3, 2008 and he made his initial appearance before Magistrate Judge Kaul on February 5, 2009. His speedy trial clock was, therefore, set to run out on April 16, 2009.

On February 18, 2009, however, VanSach filed a number of motions, including a motion to dismiss based on lack of subject matter jurisdiction, which was pending until the Court's rulings on April 9, 2009. Hence, pursuant to 18 U.S.C. § 3161(h)(1)(D), as of April 9, 2009, the speedy trial clock was tolled at twelve (12) days, with fifty-eight (58) days remaining and began to run again on April 10, 2009. The speedy trial clock, therefore, was set to run out on June 8, 2009.

While the continuance of this trial to May 19, 2009 is within the speedy trial calculation, the Court nevertheless finds that, pursuant to 18 U.S.C. § 3161(7)(A), the ends of justice served by

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continuing this trial outweigh the interest of the public and the defendant in a speedy trial because failure to permit VanSach the opportunity to consider the issues he raised at the conclusion of the final pretrial conference would deny him the time reasonably necessary to consider the evidence against him and to effectively determine his strategy and prepare for trial. The speedy trial clock, therefore, will remain tolled at twelve (12) days, with fifty-eight (58) days remaining, until the new trial date.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record, the pro se defendant, via certified mail, return receipt requested, and all appropriate agencies.

DATED: April 15, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE